



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Order Filed on June 7, 2019 by
Clerk U.S. Bankruptcy Court
District of New Jersey

In re:

EZ MAILING SERVICES, INC. d/b/a EZ
WORLDWIDE EXPRESS AND UNITED
BUSINESS EXPRESS,
Debtor-in-Possession.

Case No. 19-17900 (SLM)

Chapter 11

Hearing Date: 06/06/2019

In re:

UNITED BUSINESS FREIGHT FORWARDERS,
LLC,
Debtor-in-Possession.

Case No. 19-17906 (SLM)

Chapter 11

Hearing Date: 06/06/2019

**ORDER AUTHORIZING AND APPROVING THE SALE OF THE DEBTORS' ASSETS
RELATED TO THEIR VERNON, CALIFORNIA AND AMAZON OPERATIONS TO
QX LOGISTIX LLC, FREE AND CLEAR OF CERTAIN LIENS AND OTHER
INTERESTS, PURSUANT TO SECTIONS 363(b), (f), AND (m) OF THE BANKRUPTCY
CODE, INCLUDING, *INTER ALIA*, THAT CERTAIN TRANSITION SERVICES
AGREEMENT BY AND BETWEEN DEBTORS AND QX LOGISTIX, LLC**

The relief set forth on the following page
hereby ORDERED.

DATED: June 7, 2019

A handwritten signature in black ink, appearing to read "JK Sherwood".

Honorable John K. Sherwood
United States Bankruptcy Court

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THIS MATTER having been opened to the Court upon the joint motion (the “**Motion**”)¹ of EZ Mailing Services, Inc. d/b/a EZ Worldwide Express and United Business Express and United Business Freight Forwarders, LLC, the above-referenced debtors-in-possession (together, the “**Debtors**”), by and through their undersigned counsel, pursuant to Sections 105(a) and 363 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “**Local Rules**”) 6004-1 and 6004-2, for entry of an order authorizing and approving (i) the sale of the Debtors’ assets related to their Vernon, California and Amazon operations (the “**California Assets**”) to QX Logistix LLC (“**QX Logistix**”), free and clear of certain liens, encumbrances, and other interests (the “**Sale**”), except to the extent set forth in the Asset Purchase Agreement, and (ii) the Asset Purchase Agreement, and granting related relief; and upon consideration of the Motion and all pleadings related thereto; and due and proper notice of the Motion, the Sale Hearing, and the Sale having been provided to all persons and entities required to be served in accordance with the Bankruptcy Code, the Bankruptcy Rules, the

¹ Unless otherwise noted, the capitalized terms herein shall have the definitions ascribed to them in the Motion.

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Local Rules and Orders of this Court; and it appearing that no other or further notice of the Motion, the Sale Hearing, or the Sale shall be required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O); and it appearing that venue of these proceedings and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors have the legal power and authority to convey all of their rights, title and interest in and to the California Assets; **provided, however**, that the conveyance thereof shall not be free and clear of any lien or right, title and interest of North Mill Capital LLC (“**NMC**”) in any of the California Assets and shall be, in all applicable respects, subject to the terms and conditions of any and all agreements by and between the Debtors or QX Logistix and NMC that must, as a condition precedent to the closing of the sale of any of the California Assets, be executed and delivered to NMC, including without limitation: (A) that certain Accounts Receivable Agreement with Recourse by and between NMC and QX Logistix (together with the related agreements and documents executed in connection therewith, the “**QX Logistix AR Agreement With Recourse**”), (B) that certain Assumption and Guaranty Agreement (together with the agreements and documents executed in connection therewith, the “**QX Logistix Assumption and Guaranty Agreement**”), and (C) that certain Amendment No. 2

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to Accounts Receivable Agreement with Recourse (and the guarantor acknowledgement and agreement executed by each of the individual guarantors) by and between the Debtors and NMC (“**Amendment No. 2 To AR Agreement**”), each of (A), (B) and (C) having been previously filed with the Court in substantially final forms; and the Debtors and their professionals have actively marketed the California Assets and conducted a sale process in compliance with the Bidding Procedures Order, and have afforded potential purchasers a full and fair opportunity to make higher and better offers; and QX Logistix is the successful bidder which submitted the highest and/or best offer for the California Assets, and its offer is fair and reasonable; and the Debtors have demonstrated a sound business justification and purpose of the Sale and their entry into the Asset Purchase Agreement in the final form thereof which is annexed hereto as **Exhibit A** (the “**Asset Purchase Agreement**”), and the Transition Services Agreement in connection therewith in the final form thereof which is annexed hereto as **Exhibit B** (the “**Transition Services Agreement**”); and it appearing that the relief requested is in the best interest of the Debtors and their estates, and after due deliberation, and sufficient cause appearing therefor, it is hereby

ORDERED THAT:

1. The relief requested in the Motion is granted as set forth herein.

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2. The objections of Utica Leaseco, Inc. [Docket No. 106], Mercedes Benz Financial Services USA LLC [Docket No. 103], and the informal objections of Artex Risk Solutions, Ltd. as Managers of Trip Insurance Co., Ltd. are resolved by the affirmative representation of the Debtors and QX Logistix that (1) none of their collateral is included within the California Assets or being sold as part of the Sale and (2) none of their collateral will be used by QX Logistix after the closing of the Sale.

3. The *Objection to Cure Amount and Adequate Assurance for Vernon Warehouse Facility by Metropolitan Life Insurance Company* [Docket No. 104] has been resolved by the *Consent Order Assuming and Assigning Lease with Metropolitan Life Insurance Company* (the "**Consent Order**") that will be entered on the docket contemporaneously with this Order. To the extent there is any conflict between the Consent Order and this Order, the terms of the Consent Order shall control.

4. The objection [Docket No. 105] of Edward Bond, Plan Administrator under the prior chapter 11 proceeding of E Z Mailing Services Inc., dba E Z Worldwide Express and United Business Express, and United Business Freight Forwarders, LLC, Lead Case No 16-10615 (the "**Plan Administrator**") having been withdrawn because of the Debtors' pending motion seeking approval of a settlement agreement between, among others, the Debtors, the Plan Administrator

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and QX Logistix that settles and compromises the Plan Administrator's asserted various direct claims against certain of QX Logistix's affiliates as well as QX Logistix including claims for fraud, breach of contract, breach of fiduciary duty and unjust enrichment.

5. All other objections, reservations of rights and responses concerning the Motion are resolved in accordance with the terms of this Sale Order and as set forth in the record of the Sale Hearing and to the extent any such objection or response was not otherwise withdrawn, waived or settled, it is overruled on the merits and denied..

6. The sale of the California Assets to QX Logistix, free and clear of certain liens, claims, and other interests (other than those of NMC, which shall *not* be impaired or adversely affected in any way), on the terms and conditions set forth in the Asset Purchase Agreement, is approved pursuant to Sections 363(b) and (f) of the Bankruptcy Code.

7. The consideration provided by QX Logistix for the California Assets and provided by Azadian Group, LLC ("**Azadian Group**") to NMC under the terms and conditions of that certain Junior Subordinated Participation Agreement by and between NMC and Azadian Group under and pursuant to the Asset Purchase Agreement, including the portion of the consideration that consisted of the credit bid, is fair and reasonable and shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any

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other applicable law, and the sale may not be avoided, or costs or damages imposed or awarded, under Section 363(n) or any other provision of the Bankruptcy Code.

8. The Sale transaction is undertaken by QX Logistix in good faith, QX Logistix is a buyer in good faith of the California Assets as that term is used in Section 363(m) of the Bankruptcy Code, and QX Logistix is entitled to all protections afforded by Section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the sale, unless such authorization is duly stayed pending appeal.

9. Except for the Assumed Liabilities (as defined in the Asset Purchase Agreement, which specifically include the obligations arising under the agreements and documents executed in favor of and delivered to NMC pursuant thereto, including but not limited to the QX Logistix AR Agreement with Recourse and the QX Logistix Assumption and Guaranty Agreement), and as otherwise expressly provided in the Asset Purchase Agreement and the Transition Services Agreement, QX Logistix is not assuming nor shall it or any affiliate of QX Logistix be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way relating to or arising from the Debtors' ownership or use of the California Assets prior to the consummation of the transactions contemplated by the Asset Purchase

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Agreement, or any liabilities calculable by reference to the Debtors or their operation of the California Assets, or relating to continuing or other conditions existing on or prior to the Closing Date, which liabilities, debts, and obligations are hereby extinguished insofar as they give rise to liability, successor or otherwise against QX Logistix or any affiliate of QX Logistix. For the avoidance of doubt, the provisions of this paragraph 9 are subject to such obligations as QX Logistix has expressly agreed to undertake and perform pursuant to the QX Logistix AR Agreement with Recourse, the QX Logistix Assumption and Guaranty Agreement and the Transition Services Agreement approved by this Court as part of and in connection with the approval of the Asset Purchase Agreement.

10. Unless otherwise set forth in the Asset Purchase Agreement, the Transition Services Agreement and/or in any of the agreements and documents executed in favor of and delivered to NMC in connection with a closing under the Asset Purchase Agreement, including but not limited to the QX Logistix AR Agreement and the QX Logistix Assumption and Guaranty Agreement, QX Logistix shall not be deemed a successor of or to the Debtors or the Debtors' estates with respect to claims against the Debtors and the California Assets, and QX Logistix or any affiliate of QX Logistix shall not be liable in any way for any such claims. Unless otherwise set forth in the Asset Purchase Agreement and/or the Transition Services Agreement and/or in any of the

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agreements and documents executed in favor of and delivered to NMC in connection with a closing under the Asset Purchase Agreement, including but not limited to the QX Logistix AR Agreement and the QX Logistix Assumption and Guaranty Agreement, upon closing of the Sale, all creditors, employees and other parties in interest of the Debtors are permanently and forever barred, restrained and enjoined from (a) asserting any claims or enforcing remedies, or commencing or continuing in any manner any action or other proceeding of any kind against QX Logistix or any affiliate of QX Logistix that relate to the Debtors or the California Assets, or (b) asserting any claim or enforcing any remedies under any theory of successor liability, *de facto* merger, substantial continuity or similar theory.

11. The Debtors are authorized and directed to execute, assume, assign, and deliver all contracts, agreements, assignments, conveyances, or other documents and to take such other action that may be necessary to fulfill the terms and provisions of the Asset Purchase Agreement and/or the Transition Services Agreement, including without limitation with respect to any agreements and documents to be executed and delivered by the Debtors to NMC in connection with the consummation of the Sale, which agreements and documents shall include (but shall not be limited to) Amendment No. 2 to the AR Agreement, the terms and conditions of which are hereby

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expressly approved by this Court as being appropriate and necessary to the Debtors consummation of the Asset Purchase Agreement and/or the Transition Services Agreement.

12. Unless otherwise set forth herein, in the Asset Purchase Agreement, the Transition Services Agreement and/or any of the agreements and documents executed in favor of and delivered to NMC pursuant hereto and thereto, including but not limited to the QX Logistix AR Agreement, the QX Logistix Assumption and Guaranty Agreement and Amendment No. 2 to the AR Agreement, pursuant to Section 363(f) of the Bankruptcy Code, the Sale shall be free and clear of all liens, claims, encumbrances, and interests of any kind and nature (other than liens, claims, encumbrances and interests granted by the Debtors, QX Logistix and any other person or entity in favor of NMC, which shall be unaffected by the Sale in any manner not explicitly provided for in agreements executed by or in favor of NMC), whether arising before or after the commencement of these cases, and whether imposed by agreement, understanding, law, equity, or otherwise (with the exception of certain permitted encumbrances set forth in the Asset Purchase Agreement), with any valid liens or security interests to attach to the sale proceeds in the same order of priority as they existed before the Sale. For the avoidance of doubt, no provision in this paragraph 12, any other provision in this Sale Order, and any of the documents and agreements to be executed in connection with and/or at the closing of the Sale (other than in any agreements or documents

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executed by or in favor of NMC), shall limit, modify or impair the liens, claims, encumbrances and interests of NMC.

13. Unless otherwise set forth in Paragraph 9 herein, the Asset Purchase Agreement, the Transition Services Agreement and/or any of the agreements and documents executed in favor of and delivered to NMC pursuant hereto or thereto, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding claims or interests in the California Assets (other than permitted encumbrances set forth in the Asset Purchase Agreement) arising in any way in connection with any acts, or failure to act, of the Debtors or the Debtors' predecessors or affiliates, claims (as that term is defined in Section 101(5) of the Bankruptcy Code), obligations, demands, or guaranties of any kind and nature against or in the Debtors or the California Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the California Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the California Assets to QX Logistix, hereby are, and will be, forever barred, estopped, and permanently enjoined from asserting against the QX Logistix, its successors or assigns, their property, or any designee, such persons' or entities' interests or claims

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in the California Assets or against the Debtors. For the avoidance of doubt, no provision in this paragraph 13, any other provision of this Sale Order, and/or any of the documents and agreements to be executed in connection with and/or at the closing of the Sale (other than in any agreements or documents executed by or in favor of NMC), shall limit, modify or otherwise impair the liens, claims, encumbrances and interests of NMC.

14. Unless otherwise set forth herein, in the Asset Purchase Agreement, the Transition Services Agreement, and/or any of the agreements and documents executed in favor of and delivered to NMC pursuant hereto or thereto, the transfer of the California Assets to QX Logistix does not require any consents and/or constitute a legal, valid and effective transfer of the California Assets, and shall vest QX Logistix with all right, title and interest of the Debtors in and to the California Assets.

15. Subject to a final hearing, the Transition Services Agreement is hereby approved on an interim basis, and the Debtors are authorized to execute the same in connection with the closing of the Sale.

16. As explicitly provided for in the Transition Services Agreement, as of the closing of the Sale all accounts receivable earned by QX Logistix from and after the date of the closing of the Sale (regardless of the fact that such accounts receivable may be generated by the temporary

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services to be provided for QX Logistix by the Debtors under the Transition Services Agreement) shall be the sole and exclusive property of NMC pursuant to the QX AR Agreement with Recourse.

17. If, after the closing of the Sale, the Debtors receive any amounts due and owing to QX Logistix on account of services provided on or after the closing of the Sale, the Debtors shall immediately turn such amounts over to NMC pursuant to the QX AR Agreement with Recourse and, until doing so, hold in trust and safekeeping separate and apart from the Debtors' other property and as the sole and separate property of NMC, any amounts, whether delivered by cash, check (payable the Debtors, QX Logistix, NMC or any combination thereof), money order or other form of payment.

18. The provisions of Bankruptcy Rule 6004(h) are hereby waived.

19. This Sale Order, the Asset Purchase Agreement, the Transition Services Agreement, and any agreements and documents executed pursuant hereto or thereto, shall be binding in all respects upon all creditors (whether known or unknown) of any Debtor, all successors, assigns, affiliates and subsidiaries of any Debtor, and any subsequent trustee appointed in the Debtors' Chapter 11 cases or upon a conversion of the Debtors' bankruptcy cases to cases under Chapter 7 of the Bankruptcy Code or a dismissal of either or both of the Debtors' bankruptcy cases and shall not be subject to rejection or avoidance. To the extent any provision of this Sale

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Order is inconsistent with the terms of the Asset Purchase Agreement or the Transition Services Agreement, this Sale Order shall govern.

20. Notwithstanding anything stated herein or any other document to the contrary, neither Porzio, Bromberg & Newman, P.C. nor the Plan Administrator are waiving any claims or causes of action against Azadian, Change Capital, Chris Carey, QX Logistix, or any affiliates of the aforementioned parties, including claims for fraud, breach of contract, breach of fiduciary duty and unjust enrichment related to the Sale or pre- or post-Sale activity, and nothing herein shall be interpreted as impairing or prejudicing the rights of Porzio, Bromberg & Newman, P.C. and the Plan Administrator with respect to such claims. For the avoidance of doubt, no releases or injunctions provided for herein shall apply to Porzio, Bromberg & Newman, P.C. or the Plan Administrator.

21. For the avoidance of doubt, nothing in this Order releases the individual claims of creditors or other parties in interest that are not derivative of claims they have against the Debtors.

22. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in the Debtors' Chapter 11 cases, or in any subsequent or converted cases of the Debtors under Chapter 7 of the Bankruptcy Code or in the event of the dismissal of either or both of the Debtors' bankruptcy cases, shall conflict with or derogate from the provisions of the

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Asset Purchase Agreement, the Transition Services Agreement, the terms of this Sale Order and/or any terms and provisions of the agreements and documents executed in accordance with either.

23. The United States Trustee's quarterly fees shall be paid by the Debtors as they become due and owing; provided, however, nothing herein prejudices the rights of the Debtors, the United States Trustee, or any other party to challenge the calculation of the United States Trustee's quarterly fees.

24. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Sale Order, the Asset Purchase Agreement, the Transition Services Agreement, and any agreements or documents executed in accordance with either.